

J. Paul Gignac, State Bar No. 125676
Mischa N. Barteau, State Bar No. 274474
ARIAS OZZELLO & GIGNAC LLP
115 S. La Cumbre Lane, Suite 300
Santa Barbara, California 93105
Telephone: (805) 683-7400
Facsimile: (805) 683-7401
j.paul@aogllp.com
mbarteau@aogllp.com

J.A. Ted Baer, State Bar No. 135092
LAW OFFICE OF J.A. TED BAER
21 E. Canon Perdido Street, Suite 223
Santa Barbara, California 93101
Telephone: (805) 963-7177
Facsimile: (801) 730-2874
ted@tedbaerlaw.com

Attorneys for Plaintiff
Kelly Wilson

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

KELLY WILSON, an individual,

Plaintiff,

vs.

THE WALT DISNEY COMPANY, a Delaware corporation; DISNEY ENTERPRISES, INC., a Delaware corporation; WALT DISNEY PICTURES, a California corporation; WALT DISNEY MOTION PICTURES GROUP, INC., a California corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. 3:14-cv-01441-VC

**DECLARATION OF KELLY WILSON
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

Judge: Hon. Vince G. Chhabria
Date: April 9, 2015
Time: 10:00 a.m.
Ctrm: 4

DECLARATION OF KELLY WILSON

I, Kelly Wilson, hereby declare:

1. I make this declaration based on my personal knowledge. If called as a witness, I would testify truthfully and competently to the matters set forth herein.

2. I am the plaintiff in this action. I am over the age of eighteen and otherwise competent to testify as a witness.

3. I submit this declaration in support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment.

4. I created and developed *The Snowman* between February 2008 and August 2010. During this time period, I was applying for jobs and used my website kellywilsonfilms.com as an online portfolio to show my work. I regularly updated my website with clips and still images from *The Snowman* as it was in production.

5. The full version of *The Snowman* was publicly available for viewing on my website since at least May 2010. I know that a full version of *The Snowman*, without the music, was available on my website since at least May 20, 2010 because I have an email from Andy Grush at Yessian (the company who created the music for *The Snowman*) asking for a link to the latest cut of *The Snowman*. That email is dated May 20, 2010, and in that email I provide a link to download *The Snowman* directly from my website. Attached hereto as **Exhibit 1** is a true and correct copy of that email, which was produced to Defendants during discovery in this case.

6. My website is designed so that users can click on images of *The Snowman* at kellywilsonfilms.com, which then directs the user to http://kellywilsonfilms.com/films_pages/snowman_Page.html, the page where the full version of *The Snowman* has been available for viewing since May 2010.

7. I submitted eight job applications to Defendants between 2008 and 2012 which contained references to *The Snowman*. I always submitted a hard copy of every job application I submitted, even if I also submitted an application online.

8. On September 24, 2008, I submitted an application to The Walt Disney

1 Company and included a portfolio of my work containing images from *The Snowman*,
2 which was then in production. I submitted these materials online and by mailing a hard
3 copy. Attached hereto as **Exhibit 2** is a true and correct copy of the materials I submitted
4 with this application. These documents were produced to Defendants during discovery in
5 this case.

6 9. On October 12, 2009, I submitted an application to Pixar and included a
7 portfolio of my work containing images from *The Snowman*, which was then in production.
8 I submitted these materials online and by mailing a hard copy. Attached hereto as **Exhibit**
9 **3** is a true and correct copy of the materials I submitted with this application. These
10 documents were produced to Defendants during discovery in this case.

11 10. On October 29, 2009, I submitted an application to Pixar and included a
12 portfolio of my work containing images from *The Snowman*, which was then in production.
13 I submitted these materials online and by mailing a hard copy. Attached hereto as **Exhibit**
14 **4** is a true and correct copy of the materials I submitted with this application. These
15 documents were produced to Defendants during discovery in this case.

16 11. On September 27, 2011, I submitted an application to Pixar and included a
17 link to my website, which had the full version of *The Snowman* posted for viewing. I
18 submitted these materials online and by mailing a hard copy. Attached hereto as **Exhibit 5**
19 is a true and correct copy of the materials I submitted with this application. These
20 documents were produced to Defendants during discovery in this case.

21 12. On September 27, 2011, I submitted an application to Playdom and included
22 a link to my website, which had the full version of *The Snowman* posted for viewing. I
23 submitted these materials online and by mailing a hard copy. Attached hereto as **Exhibit 6**
24 is a true and correct copy of the materials I submitted with this application. These
25 documents were produced to Defendants during discovery in this case.

26 13. On September 28, 2011, I received an email from Bruce Ferguson at
27 Playdom, stating that he received my resume in the mail and that he would keep my resume
28 on file. The email also stated that Playdom had “several teams down in Palo Alto that

1 could potentially benefit from seeing [my] resume.” Attached hereto as **Exhibit 7** is a true
2 and correct copy of the email received from Bruce Ferguson at Playdom. These documents
3 were produced to Defendants during discovery in this case.

4 14. On November 21, 2011, I submitted an application to Playdom and included
5 a link to my website, which had the full version of *The Snowman* posted for viewing. I
6 submitted these materials online and by mailing a hard copy. Attached hereto as **Exhibit 8**
7 is a true and correct copy of the materials I submitted with this application. These
8 documents were produced to Defendants during discovery in this case.

9 15. On February 4, 2012, I submitted an application to Cinderbiter, a stop motion
10 animation division of The Walt Disney Company, and included a link to my website, which
11 had the full version of *The Snowman* posted for viewing. I submitted these materials
12 directly to Kirk Scott by email, based on a recommendation from a friend and colleague
13 Richard Quan. I received an email response from Kirk Scott on February 6, 2012, thanking
14 me for submitting my resume. Attached hereto as **Exhibit 9** is a true and correct copy of
15 the materials I submitted with this application, and the email response received from Kirk
16 Scott. These documents were produced to Defendants during discovery in this case.

17 16. After reviewing Defendants’ Opening Brief in Support of Defendants’
18 Motion for Summary Judgment, specifically the section on page 11 discussing the fact that
19 *The Snowman* was posted on Facebook, I reviewed my connections on Facebook in order to
20 determine how many connections I had to people who work at Disney. In my review, I
21 only considered people that I was Facebook friends with prior to March 2013.

22 17. Based on my review of my Facebook connections, I learned that I am 1st or
23 2nd connected through Facebook friends with 64 people who were employed under Disney.
24 1st connections are people who are directly connected to my account (i.e. I am “friends”
25 with them on Facebook). 2nd connections are people who are friends with my friends on
26 Facebook. These “friends of friends” on Facebook could have viewed *The Snowman* on
27 Facebook because *The Snowman* posting was available for “friends of friends” to view. In
28 addition all of my friends show a direct link to Disney employees and these friends could

1 have watched the film together, downloaded the film, emailed it through personal
2 connections, or have seen it in a group setting.

3
4 I declare under penalty of perjury under the laws of the United States of America
5 that the foregoing is true and correct.

6 Executed this 19th day of March 2015, at Mill Valley, California.

7
8 
9 Kelly Wilson